HIS MAJESTIES ANSWER TO THE DECLARATION of both Houses of Parliament, Concerning the Commission of Array.

Of the 1 of *July*. 1642.

YORK:
Printed by Robert Barker, Printer to the Kings most Excellent Majestie: And by the Assignes of John Bill. 1642.

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His MAJESTIES Answer to the Declaration of both Houses of Parliament, concerning the Commission of Lieutenancy.

HAving first received, by the published Votes and Declarations of both Our Houses of Parliament, severall informations of evident and imminent danger unto Our Kingdom, from Enemies abroad, and at home, and finding that Our Commissions of Lieutenancy (although we did since the beginning of this Parliament grant the like for the County of York to the now Earl of Essex with the privity of both Our houses of Parliament, and without exception from either; and that the same was the means for defence of this Kingdom used in the happy times of that good Queen Elizabeth, and Our blessed Father, and confirmed as well by the opinions of Judges and Lawyers, as the universall obedience of the Subjects) were all of them, without hearing any of Our Councell learned, voted illegall, and by Our House of Peers called in to be cancelled. And that thereupon Our Kingdom

dom lay open and exposed to all dangerous attempts without other provision then of a late pretended Ordinance of both Our said Houses; which (being made without Us, and contrary to Our expresse will declared, and after it had been twice refused in Our House of Peers, and after the departure of a major part of the Peers) was so far from being a means to prevent danger, that if it should have been admitted, it would in all probability have been the ready way to confusion, and ruine, as being made in an unparliamentarie, unprecidented, and unjustifiable way, and therefore of a most dangerous consequence, both to Us and Our people, as well in that particular, as in the Example.

We did therefore, for the avoiding of the perill of delayes and expence of time in disputes, issue forth such Our severall Commissions of Array into Our severall Counties, as upon great advice We conceived Were not onely secure for, but also might well be most satisfactory unto both Our Houses as being beyond all just exception in the point of Legality, Danger, or Inconvenience, the same having been heretofore most deliberately agreed upon and setled (as we shall herein shew) in, and by the care and wisdom of the Parliament, held

in

in the fifth yeer of King Henry the fourth.

And we expected for this Our so Princely care of Our People, and observance of Our Laws, rather the dutifull thanks of both Our Houses, then the return of such an Answer or Declaration as causelesly imputes to this Our so well intended and justifiable an act, not onely (upon mis-construction and mis-application of severall Acts and Declarations in Parliament) the tax of illegality, but also marketh it (upon the mis-representation of divers Powers, and omission of divers Limitations in Our Commission) with the brand of extream danger, and inconvenience thereby to Our people, and of an heavier Yoke of Bondage then either that of the late Ship-money, or any other charge taken away this Parliament.

In all which, for the better and further satisfaction of Our well-affected people, and to save them (if possible) from incurring any danger either by obeying that Ordinance, or disobeying Our Commissions, (in both which we are resolved to require a strict examination and account) we have taken the pains to examine the said Declaration, and the Objections therein against Our Commissions.

And for the better understanding of the severall particular doubts which are now raised

 thereupon,

thereupon, we hold it necessary in the first place, to set forth the true end of these Commissions, with the severall Powers and Limitations thereof which by this Declaration are brought into question, together with the severall misrepresentations thereof in this Declaration.

The Subjects being of three sorts; Some having good estates and able bodies; Others, being of good estates, but impotent; Others, able of Body, but not in estate: And the service required, being for the necessary defence of our Kingdom in generall in the time of danger.

The Commissioners are to cause those of the first sort, to Arm themselves according to their degree and estate, (and serving in Person, they are not bound by this Commission, to find Arms for any others.)

Those who (having estates) are not able to serve in person, are to be assessed, and may be distrained to finde Arms for others, according to the quantity of their Lands and goods; But with this Limitation, *prout rationabiliter portare potuerunt, & salvo statu suo*; that is, that they be charged but moderately, and so as they may live still according to their former condition.

As for those of the third sort, who are not able

able to Arm themselves, by this Commission, as it was altered by common consent in 5. H. 4. (for it was otherwise before that time) they are not (as to this matter of Arming) medled withall.

And therefore this part of the Commission, is mis-represented in the Declaration; which supposeth a power given by this Commission, to charge all men without distinction, with Arms, at the discretion of the Commissioners: And those that are able to finde Arms, and such as are impotent, to finde men at Arms according to the quantity of their lands and goods; And also wholly omits the manner of the charging them, which is to be moderately, and so as they may still live, according to their former condition.

The Commission having thus, with equality, and indifferency, charged Our Subjects with provision of Arms, it further provides for their calling together, training and exercising, not (as it is in the Declaration) generally at the pleasure of the Commissioners without restraint, either of time or place) But that they shall be called together, *ad certos dies & Loca quæ videritis magis competentes & expedientes, & pro populo minus dampnosos*; At such times & places, as the Commissioners shall think to be most fitting and expedient, and least hurtfull unto the people.

And

And having thus provided, for the Arming and preparing Our Subjects, for defence of the Kingdom; In the next place, the Commission gives power to the Commissioners, to lead them to the Sea-coast, or elsewhere, but not at the pleasure of the Commissioners (as may be inferred out of the Declaration) nor without Limitation (though omitted also in the Declaration) But the Commission provides, That they are to be led to the Sea-coast, or elsewhere, *ubi ac quotiens necesse fuerit ad inimicos nostros expellend. debelland. & destruend. cum periculum immineat*, At such times and places, as it shall be necessary for the expulsion, vanquishing, and destruction of Our Enemies, when there shall be imminent danger. And it further provides, in another part of the Commission, That they shall be conducted, *cum periculū imminuerit in defensione regni & patriæ tam ad Costeram Maris quam alia loca ubi magis necesse fuerit*, in case of imminent danger, for defence of the Kingdom and Country from time to time, as well to the Sea-coast, as other places where it shall be most necessary.

And although notwithstanding all these limitations & cautions, it be true, That in this charging of Arms, as also for the times and places of calling together Our Subjects, and of conducting or leading them, and the dangers

gers upon which they are to be so conducted and led, much is left to the discretion of the Commissioners (as it must of necessity in all Commissions, where the places, times & occasions of execution of them depend upon future accidents and circumstances, and cannot be certainly known, or described at the time of the issuing of the Commissions.) yet nevertheless it cannot be inferred thereupon, That therefore Our Commissioners have a meere absolute arbitrary Liberty of Will to do what they please. But that if they shall wilfully and unjustly grieve any of Our good Subjects, in exceeding or not observing Our Limitations or Directions, they are, by Law, clearly punishable by Indictment for the same, Nor are, or shall any of Our Subjects so grieved be without remedy or relief.

And to the end that every County, so far as in Us lyeth, should have cause to rest the more assured against any evill usage and abuse, By this Commission We have appointed for Commissioners, such as have estates in the severall Counties, and are persons of Honour and Reputation, Who are not onely engaged to all fairnesse out of their own interest, but also in the concernment of their posterity, Kindred, Alliance, Friends, and Tenants, and the

good affection of their Countrey, which to persons of such Condition as they are, is of a consideration beyond their Fortunes; So that We hope their forwardnesse in undertaking this trouble, for the publike defence, will occasion in Our good Subjects, rather a willing Obedience unto Us, then the least distrust or Jealousie of any of them.

Having thus stated the substance of Our Commission, and prevented that mis-understanding, which this Declaration might have else begotten thereupon; We (in the necessary justification thereof, and vindication of Our own Honour, against those expressions in that Declaration, which so neerly do concern Us (under the Common name of Evill Counsellors) as if We had violated Our Laws, even those so lately made; broken Our often Protestations of governing according to Law, and done that which would bring Our people into a slavery) shall now joyn issue with Our two Houses, in every materiall part of their Declaration, both in the consideration of the pretended Danger, Inconvenience, and Illegality.

And herein, first, for the pretended Danger, and Inconvenience so much urged; We do deny.

That

That this Commission is full of Danger, or Inconveniency to Our Subjects, or will bring an heavyer Yoke of Bondage then the Ship-money, or any other illegall charge, taken away this Parliament; or indeed, any Danger or Inconvenience at all.

And therein We appeale to each good mans conscience and reasonable understanding, In a Kingdom (as this is) which in its fundamentall policy (as well for its own assurance, against the danger of Forraign Aids, as the bad use that might be made of great constant Forces (whether forraign or native) must necessarily be defended by it selfe: What other way of defence can be imagined but by the Subject: What more reasonable proportion of charging them can be found: Wherein can the Limitation of the (otherwise Arbitrary) Discretion be bettered: Or how, in any one particular, can a more equall and fitting way be taken for the avoyding the grieving Our good Subjects in their own particulars: yet withall providing for the defence of Our Kingdom in the generall, then is by this Commission:

And We cannot but professe Our Wonder, That since (as We shall shew) this very Commission, was with so much care, both in respect of the Commissioners and the powers of execution thereof, over the persons to be commanded, al-

lowed, and setled in all points, to the very desires of the people (and that in Parliament) in the fifth yeer of King H. 4. how such Danger, Inconvenience, and Bondage can be by Our two Houses imagined in this act of Ours, without violating that rule, so often urged by them, (though not so properly applyed to them without Us) That a dishonourable thing ought not to be imagined of the Parliament. And it is as strange to Us, that all this should happen by this Commission, and yet that Our Subjects should, for so many yeers past, have enjoyed so many happy dayes in the reign of Queen Elizabeth, and Our Father, both of blessed memory, under the provision of Lieutenancy, which is agreed by this Declaration to be little differing from those of the Commissions of Array in the Powers.

And lastly, We demand, whether the persons appointed over the Militia by Our Houses of Parliament, have not, by their pretended Ordinance or Orders, most of those powers; nay, some greater over the Subject, in this matter of the Militia, then are in this Commission: and how they themselves can imagine these powers to be of a better nature by their authority, then they are by Ours.

And as to this tax of danger and inconveni-

ence

ence, as in the generall it did require no answer at all, (though for the satisfaction of Our people, We have therein thus inlarged Our selves) so for that particular of the noak of Bondage thereby, in making it heavier then that of Ship-money, since they have not shewed in what particulars, we shall say no more but this, That by this Commission no money at all comes to Us or to Our dispose, nor is any money appointed to be raised, but onely Arms provided: And the Arms which Our Subjects are charged to bear or finde, are to be their own proper goods (which Sir Richard Hutton, in his Argument in print against the Ship-money, well observed, and thereby differenced the providing of Arms and payment of Ship-money) and are provided once for all, and not yeerly to be renewed as taxes for money might be, and remain in their own custody, and for their own defence as well as Ours.

we shall now proceed unto the next generall issue, touching the pretended illegality of Our Commission of Array, and shall justifie the legality thereof by Common Law and by the practise of former Ages conform to it, and by Statutes in the very point against all the severall pretences mentioned in the Declaration, whereunto we shall give particular Answers.

And

And we shall first begin with the Common Law, whereunto the Declaration saith this Commission is contrary; and therein affirm,

That this Our Commission is warranted by the very fundamentals of Our Government, and (as We said in Our late Proclamation) the right of issuing thereof is inherent in Our Crown.

For since (as We hope none will deny) the Kingdom must of necessity be ever in readinesse (in time of danger at least) by power of Arms to prevent or suppresse Rebellion at home, and Invasion from abroad; and to that end the Subject must be armed and prepared before hand, and conducted after, as there shall be occasion; and that this cannot be done without a Command or Government, We desire much to know in whom, out of Parliament, (for Parliaments are not allwayes, nor can be called at all times, or meet on the sudden) this power can be, but in Us as the Supream Governour; (as it is in all other States, be the persons of the Governours one or more, according to the form of each State) And can the Supream Governour, according to his duty, and Our Self more particularly, according to Our Oath, otherwise afford Our people that protection which is due unto them in maintaining

taining to them the Laws in the matter of Property and Liberty against private injury or oppression, As well as Our Self, and them, and whatsoever is deer unto any of Us against Enemies or Rebels, especially the just Rights and Prerogatives of Our Crown wherewith God hath trusted Us (according to the fundamentall and Well-established policy of Our State) as well for the peoples good as Our own honour, both which must be preserved; And will any man say that by calling of Our Parliament, (which is but a meeting of Us and Our Subjects (and such they continue as well collectively in the two Houses, as they were before singly) and a meeting in its own nature dissolvable at Our pleasure; and though [illegible] enlarged by Us in Time, yet not in Power) We are grown lesse or departed with any thing to them either by way of abdication or communication of Our Royall Power: This upon the common principles of Reason and Government is so obvious to every man, that We shall, for the present, proceed no further therein either by quotations of Acts of Parliament, or other legall authorities (some whereof We have recited in Our late Proclamations) till Our two Houses shall give us some justifiable instance of some good time to the contrary. We

We come next to the continuall practice by Us alleadged (being alone sufficient to declare an originall fundamentall Law of Our Kingdom, or at least by a tacite consent to introduce a Law) and to this purpose we shal shew that the power of granting Commissions for the defence of the Kingdom in the generall whereunto onely We applied and do apply the opinions of Sir *Richard Hutton* and Sir *George Crook* (not meaning therein, as neither in Our Proclamation (as is cleerly mistaken) the present form setled by 5. H. 4. (which We Our selves declared was made upon alteration) though for the substance thereof we might have said so much, and made it good, as it appears by the Marginall Quotations) is warranted by the presidents in former Ages.

See the printed Arguments, fol. 25. 64, &c.

See 14 H. 3. in the printed Argument of Sir *George Crook*: a Commission to the Bishop of *Rochester* and others, and to the Sheriffe of *Kent*, to cause all men at arms in that County to be sworn, and to assesse them what arms they shall finde. And divers other presidents there of Arrays in the times of severall Kings. And see Cl. 14 H. 3. m. 15. Dors. the like to other Counties. And 36 H. 3. (as appears in the History of *Matth. Paris* who lived at that time, Fol. 864.) *Rex constituit & generaliter per Angliam voce praeconia fecit acclamari missis super hoc brevibus ad singulos Comitatus ut* secundum pristinam Consuetudinem *arma civibus competenter assignarentur & monstrarentur & censerentur ut essent sufficientia & competentia*

this was according to Customes before the Conquest

And

secundam cujuslibet facultates. The King caused Proclamations to be made (for in such cases Proclamations declaratory were not conceived in those times to be illegall) and sent Writs into all Counties of *England*, That (*according to ancient custome*) arms should be competently assessed (or appointed) for the people: And that they should be (mustred) or shewed and inrolled, that they might be sufficient and competent according to every mans estate. And see Pat. 48 H. 3, m. 3. Dors & m. 7. Dors. Cl. 23. E. 1 m. 5. Cl. 25 E. 1. m. 17. Dors. in cedul. pendent. Pat. 31. E. 1. m. 20. Cl. 16. E. 2. part. 1. m. 13. Dors. Pat. 18. E. 2. m. 32. and Rot. Vascon. 18. E. 2. m. 4. 10. 27. Cl. 7. E. 3. part 1, m. 25. Rot. Scot. 10. E. 3 m. 8. Franc. 26, E. 3. m. 5. Cl. 44. E. 3. m. 22. Scot. 7. R. 2. m. 9. Franc. 10. R. 2. m. 24. pat. 4. H. 4. part. 2. m. 10. Dors. And after the Parl. of 5. H. 4. See pat. 7. H. 4. part 2. m. 31. Dors. 11. H. 4. part 2. m. 24. Dors. Pat. 5. H. 5. part 2. m. 37. Dors. Pat. 8. H. 5. m. 17. Dors. Pat. 34 H. 6. m. 8, Dors Pat. 9. E. 4. part 1. m. 1. Dors. Pat. 12. E. 4. part. 1. m. 13. Dors. And very many more Commissions of Array in the severall reignes of these Princes.

And this practice, the Penner of this Declaration doth indeed not deny; for having before confessed the often issuing of Commissions of Array, after 5. H. 4. in the times of H. 4: H. 5. and H. 6. (and he might have brought it to later times, if he had so pleased) he doth afterwards confesse, That divers Commissions of Array issued in divers Kings reigns before 5. H. 4. But as to this point of practice before 5. H. 4. he saith by way of Answer, That for the most part they were warranted by particular Acts of Parliament. And yet

amongst so many presidents of severall Commissions, he gives instances onely of two yeers in 13. & 14. E. 3. of Commissions of Array then issued, warranted by Act of Parliament. which, if true, doth no more disprove the legality of other Commissions of Array, constantly issued without a Parliament, then it doth of Commissions of Oyer and Terminer (which at the same time in 14. E. 3. together with the Commissions of Array were appointed to issue to the same persons) or of any other Act, which the King doth by the advice of his Parliament, though he may do it without them: Rather it implieth the legality, and the former usage of such Commissions of Array, in that it appoints such Commissions to issue, but limits not all the particular Clauses or Powers to be inserted therein as a thing known and usuall to be done.

Rot. Parl. 13. E. 3. P. 2. N. 39

Rot. Parl. 14. E. 3. P. 1. N. 53

But the truth is, both the presidents doe concern the drawing of men out of the kingdom to a forraign War; and so are nothing to the purpose We have in hand. And that of 13. E. 3. is not at all a Commission of Array, but of another nature, giving power to the Lord Wake, and others to provide moneyes, and to cause certain persons there named, Who had particularly undertaken the Service of the Scottish

Wars,

wars, *Leur arraier & appareiller d'aller vers*, Newcastle. To array and prepare themselves to goe to *Newcastle*, (whither they were to be brought at the charge of the Counties) and to be there at a time appointed.

Having thus set forth the continuall practice of issuing forth Commissions of Array in former ages (Whereunto we never found, till now, any exception, as for home defence) and the absolute necessity thereof, We doubt not but every indifferent Judgement will easily conceive, That this power is a right in Us by the Common Law. And the rather, when they shall consider, That a Commission of Array having been issued by the King in 5. H. 4. The Commons in Parliament, that yeere, did not except to any part thereof as illegall, no, not to the Clauses, which seemed heavy over the Commissioners; nor did except at all to any the powers of execution thereof over the persons to be commanded, but did acknowledge the Royall assent, for the amendment, and alteration of that Commission into the now present form, to be an Act of great grace.

And herein we cannot but admire that the Penner of this Declaration should urge it as a reason why the Commons in that Parliament of 5 H. 4. complained not for relief against

the Commission in the powers of execution over the persons to be commanded, because (as he supposeth) they knew that they were so clearly against the late Statute of 4. H. 4. Whereas (if it had been so) they should the rather have complained, because they issued against so late a Statute so cleer in the point, (unless the policy & temper of the times be since much altered) for in a matter of so high a nature as the powers of this Commission, which (as this Declaration confesseth) did surely most concern them and the Kingdom, They were bound, as well in duty, as discretion, to have sought remedy against so great a violation of the Law and Liberty; and the rather at this time, when they thought fit to petition against part of the Commission, since an exception but to a part, especially by him, who ought to complain against the whole, is a violent presumption of his allowance of the residue.

We come now more particularly, to the examination of this Our Commission as it stands by Statute-Law, and herein (as in the matter principally insisted upon in the Declaration to be disproved) We do affirm, as formerly in Our Proclamation;

That this Our Commission is warranted by Parliament, in 5 *H.*4.

And

And to this purpose, we do observe; that this Declaration, doth confesse; That the Record in the Parliament of 5. H. 4. concerning the Commission of Array, is an Act of Parliament; And that the Question is now, onely about the meaning thereof, whether the Parliament meant thereby, onely to take away some penall Clauses touching the Commissioners; (as the Declaration affirms, to which purpose, onely it alloweth it for an Act) or else to settle also the Powers of Execution thereof, over the persons to be commanded, as we affirm.

And therein (as we do agree) that at the first, the Complaint of the Commons, was onely in respect of some Clauses & Words therin, which were Grievous, and Dangerous to the Commissioners: So it cannot be denyed, but that afterwards the Copie of the Commission so Complained of, was delivered by the King to the Commons, with an expresse Generall Liberty (without any restraint) to correct it according to their own minds, and thereupon the Commons did make use of that further Liberty, and corrected the Copy, in divers materiall Clauses, and Words which concerned the Powers of Execution, as well as those, which concerned the Commissioners (though the contrary be strangely affirmed by the Penner of this Declaration) as

may

may appear more particularly by the Clauſes following, wholly omitted by him.

1 **First, the Copie gives power**, *ad armari faciend. omnes illos qui de corpore ſunt potentes & habiles ad armand. tam illos qui de ſuo proprio habent unde ſeipſos armare poterunt, quam illos qui non habent unde ſeipſos armare poterunt.* To cauſe to be armed, all thoſe who have of their own whereby to arm themſelves, as well as thoſe, who have not wherewith of their own to arm themſelves. **Which laſt Clauſe, concerning the Arming of thoſe, Who are able of Body, but not in Eſtate (being ſuch as are by Us before, reckoned amongſt the third ſort of Our Subjects) is Wholly omitted in this Commiſsion, as it now ſtands corrected in 5. H. 4.**

2 **The Copy, as concerning the aſſeſſing, and diſtraining of all thoſe Who are able in their Eſtates, but not in their Bodies, goes therein thus,** *Ad inveniend. juxta quantitatem terrarum & bonorum ſuorum, & prout rationabiliter portare poterunt, ſalvo ſtatu ſuo, armaturas hominibus ad arma, & hominibus armatis & arcus & ſagittas ſagittariis ſic arraiatis & triatis, qui non habent armaturas arcus & ſagittas de ſuo proprio, nec unde armaturas arcus & ſagittas emere & providere poterunt, & ad contribuend. expenſis omnium illorum qui ſic laborabunt pro defenſione dicti Regni noſtri, tam infra dictum Com. noſtrum quam extra, quãdocũq; indiguerit; Ita qd illi qui morabũtur &c.* For the finding of Arms, according to the quantity of their

their Lands and Goods, and as they may reasonably bear, saving their degree, for men at Arms, and men Armed; and Bows and Arrows for Archers so Arrayed, and trained, which have not Arms, Bows and Arrows of their own, nor have wherewith they can buy and provide Arms, Bows and Arrows; and to contribute to the expences of all those which shall so labour for the defence of Our said Kingdom, as well within that Our County as without, whensoever there shall be need. **All which, as may appear upon the comparing, is much beyond that Commission of 5. H. 4. as it was entred after the correction.**

Upon these proceedings in 5. H. 4. the corrected Copie being presented to the King, with a Prayer by the Commons; That from thenceforth forward, no Commission of Array, should issue otherwise, nor in other Words, then was contained in the Copie so corrected, &c. **An Act was thereupon, made by the Kings Royall assent thereunto, by the advice of the Lords.**

And thus upon the whole Record it is cleer, That in the litterall Sence the Commission is fully enacted in the whole; and We do not observe that to be denied in the Declaration. And the Art of the Penner seems to be spent onely concerning the intent of the Parliament in labouring to prove, That the Commons meant

nothing

nothing in the Act, but the taking away the penall clauses and words concerning the Commissioners. And the Argument is drawn only from the end of the Statute, which the Declaration saith was onely for the security of the Commissioners: And this the Penner goes about to prove: First, From the Complaint, as being no more; Secondly, From their amendment of the Copie, as being onely concerning the Commissioners. Thirdly, From the Prayer, being to the same purpose. Fourthly, Out of the occasion, as supposing the Act necessary, on the part of the Commissioners, not on the part of the persons to be commanded. Lastly, out of the subsequent practice of issuing Commissions, that there never went out one agreeable with the Copie so corrected.

And herein, to justifie this Our sence on this Act of Parliament of 5. H. 4. And withall to shew the Errors, and mistakes of the Declaration in the frame of the Argument to the contrary; the state of the Case stands thus briefly.

The Commissioners complained but against the Penall Clauses upon the Commissioners (which We agree) at first; but afterwards, the King left them at liberty to correct the whole, as they pleased. And now they alter their mind, and do not rest in correction of those

Penall

Penall Clauſes upon the Commiſsioners, according to their firſt deſire, but (as it is plain upon the compare of the Copie, as it was corrected, with the Commiſsion formerly iſſued, the not obſerving whereof was the great miſtake, that doubtleſſe now miſled Our two Houſes) the Commons likewiſe (as wiſe men) who would not wave the advantage of a proffered favour from the King, did correct the Commiſsion alſo in the Powers of execution over the perſons to be commanded: And thereupon the corrected Copie being preſented, and the Commons expecting that even preſently (for there was then occaſion) and often afterwards Commiſsions of Array would (as they did in truth) iſſue forth, did pray not onely for the indemnity of the Commiſsioners, which had bin indeed but anſwerable to the firſt complaint; But in the firſt place, they made their Prayer in theſe Words, That from thenceforth forward, no Commiſſion of Array ſhould iſſue otherwiſe, nor in other Words then is contained in the ſaid Copie (ſo corrected)

This now being apparently the true ſtate of the whole caſe (cleared from all miſtakes) we think it ſo plain, that it requireth no Argument to manifeſt, That the intention of the Parliament, was both to ſettle the Clauſes,

concerning the Powers of execution, and the Clauses concerning the Commissioners. Thus then we passe over to the Answer of the Objections.

First then, for the first pretence, That the Complaint was solely on the behalfe of the Commissioners, we agree it to be true, and perhaps the Commons had no further thought at the begining, nor till after an occasion given by the offer of the Liberty for a Totall reformation: But then they might desire an alteration accordingly.

For the second pretence (which destroyed, makes an end of the question) That the Commons made no amendment in the Powers of execution over the persons to be commanded; It is apparently mistaken, as appears by the particular instances before mentioned.

For the third pretence of the Prayer, (which came not till after the Commission was in all points so as before corrected) That the Commons did not desire any amendment or Declaration concerning the Powers of execution, that is also mistaken; For having made those severall amendments, in the very first place (before any particular desired on the behalf of the Commissioners) their Prayer is as generall as their amendments, That from

thence-

thenceforth forward, No Commiſſion ſhould iſſue otherwiſe, nor in other words, then is contained in the ſaid Copie.

For the fourth pretence, That it was unneceſſary to take care of the perſons to be commanded, becauſe that the Powers of execution over them were againſt 1. E. 3. cap. 5 25. E. 3. cap. 8. and 4. H. 4. cap. 13. and that the Commiſſions of that kinde, were then ſo lately damned in 4. H. 4. We Anſwer, That if it were ſo, there was the more neceſsity for them to complain, as we have ſhewed before. But in this alſo, though it be needleſſe, We ſhall herein further clear Our Commiſsion from thoſe ſtatutes.

As for the fifth pretence of occaſion of relief for the Commiſsioners more then for the perſons to be commanded, We ſay, the Commons could not but know, that there was no more occaſion for the one, then for the other: For the ſame Law of 4 H. 4 if it had (as is pretended by the Declaration,) expreſſely damned the Commiſſion as unlawfull in the Powers, that (without more) had apparently, to every common Judgement, ſufficiently ſecured the Commiſſioners againſt all refuſalls; And in truth, the perſons to be commanded, being moſt of them of the lower ſort, had more reaſon to fear the Commiſsioners, then the Commiſsioners,

being men of Power, had to fear any trouble by Fine or Imprisonment, or otherwise, from any of the Courts above, especially in a time, when Parliaments were so frequent.

For the last pretence of contrary practice, Our Answer is. First, We deny this (which the Declaration affirms) That though many Commissions of Array did issue out after 5. H. 4. yet none of them did agree with it in words and matter: For we say, That divers Commissions were the very same, saving in those things which were necessarily, and as of course, to be changed, as (amongst others) may be seen in the after times of King Henry the fourth.

See Pat. 7 H. 4. part 2. m. 31. Dorſ.

And as unto the pretended contrary practice, We agree, that it is true, Divers Commissions of Array did issue out, which do vary from this Statute of 5. H. 4. yet We deny that they must be therefore contrary to it; For (howsoever upon the Commission of 5 H. 4. as it was corrected in the severall Clauses in such manner as before) it is enacted that from thenceforth forward no Commission should issue out otherwise then is contained in that Copie, yet it is most evident, notwithstanding, that the meaning of the Law could never be to tye the King to the very words of

Pat. 11. H. 4. part 2. m. 24. Dorſ.

that

that Copie; For then at all times the Commissions must have begun with Rex, &c. and not Carolus or Regina; and ended with the same Teste for Time and Place, and just the same preamble of danger, be it true or false (Whatsoever other occasion had been) must have been meant to be expressed; All which are absurd. And in this, as in all Acts of Parliament, as well as in Wills, the intent clearly and necessarily appearing out of the Act it self, is the Law, which in this case was not so much to tye to the very identicall words, as That the King should not issue out any Commissions of Array which should exceed this which was so setled by any further penalty on the Commissioners; nor in the powers of execution upon the Persons to be commanded; which sence appears in this, that in such a case it could never have been meant, That the Powers of execution of the Commission, being severall, as to Array, Assesse, Arme, Train, Muster, and Conduct, and all these not necessary on all occasions, nor all alwaies equally fit to be entrusted to the same persons, That the King should be bound at all times unnecessarily to command the execution of them all, and equally to entrust the same persons with them all, as he must have done in case the Act had been litterally to be expounded in each tittle.

The truth is, many Commissions did vary, yet still were Warranted, as not exceeding that of 5. H. 4. in the powers. As sometimes granting but part of them when there was no cause to use all; as also, some varied on the occasion, as sometimes providing against an invasion, in this or that part onely, sometimes more generall throughout the Kingdom: And lastly, it is true that some were upon occasion of rebellion, for which there is as much cause as against a forraign enemy, for those Commissions are not against 5. H. 4. Which was a president, onely for the power of execution of Commissions of Array (whatsoever might be the necessary occasion to issue them.) And as this particular Commission sent forth in 5. H 4. & thus after corrected, was on the occasion of ỹ feare of ỹ French, and therefore was, upon that accident, made onely as against an Enemie; so if according to former practice the like had then issued in case of Rebellion (in which case perhaps Rebellion had been mentioned as the cause) then the suppression of Rebellion might have been inserted in this president, and then the Argument might have been at this day used as well against the warrantableuesse of this Commission in case of Invasion.

And

And as to the president of a Commission of Array in 6 H. 4. cited in the Declaration as not agreeing with that of 5. H. 4. neither in words or matter, we conceive it is in substance warranted by it: For there the King (upon occasion of the French being in Piccardy, ready to besiege some of his Forts there, and hearing that they intended to come to aid the Welch, being then in Rebellion) sends out his Commissions into Kent, Somerset, and other Counties, to Array, Train, and Arm the Inhabitants there, to the end they may be ready, as well at the Sea-Coast as elsewhere, where and as often as there shall be necessity for the expelling, vanquishing, and destroying of those enemies when there shall be imminent Danger, as in such case had been accustomed. But he thinks not fit to give to them the power of conducting them (which is in the Commission of 5. H. 4.

But shortly after, upon information of an intention of the Welch to enter into England, a commission issues to Sir Thomas Barkley touching some of these Counties and others, not, to array & arm the inhabitants, for that was done before, but, ad supervidendum, to see that they were sufficiently arrayed, according to their estates; and to lead them, as often as it should

be

be needfull for resistance of the Rebels.

So that as We conceive, the Powers which were put together in 5. H. 4. are here severed, but there is nothing in either Commission which exceeds or crosses the Powers setled by the Commission of 5. H. 4. Though if it did, it might prove the illegality of those, but nothing against the legality of Our Commissions.

And if other particular Commissions had been produced, and the differences particularly observed, We should have been the better able to have applyed Our Answer thereunto; And in the mean time, We look upon all such Commissions, as regulated and warranted by this Act of 5. H. 4. and in pursuance thereof.

Notwithstanding, if some Commissions can be produced, which are not warranted by 5. H. 4. Yet that will be no sufficient Argument to prove, That this of 5. H. 4. never meant to settle the Powers of Execution, for there is no doubt, but in so long a proces of time, as since 5. H. 4. there may have been some deviations contrary unto the Act, the same having not at all times been remembred, as perhaps also may be in the Clauses concerning the Commissioners, which yet We are sure Our two Houses will not allow as an Argument against the force of 5. H. 4. as allowing it to be an Act concerning them. We

we might further adde the opinion of Sir *Edward Cook*, (whose great learning and affection to the Rights and Liberty of the Subject are not unknown) who in his Treatise of the Jurisdiction of Courts (being one of those Books since this Parliament desired or directed by the House of Commons to be published) expresly declares, That this Act, touching a Commission for Arraying and Mustering of men, is at this day of force. Jurisdiction of Courts, cap. Court of Chevalry.

But if any man be yet unsatisfied with so cleer Reasons on Our part, and in Our Answers, We shall conclude upon him with the authority of the Whole Parliament of 7. H. 4. Rot. Parl. n. 36. Within two yeers after this Our Commission was setled, When probably many of the same persons were members of both the Parliaments, whereby it appears that this Act of 5. H. 4. is so binding as unto all the Powers of execution over the persons to be commanded, that the Clergie (who in former times had used to be Arrayed amongst themselves by Writ or Commission to the Bishop or Archbishop) were bound, as within the body of that Commission so setled by Parliament. And they thereupon, in that very Parliament of 7. H. 4. are excepted out of this very Commission of

5. H. 4. which is therein mentioned; and it was then enacted, That from thenceforth the Clergie be not any wayes charged amongst the Laity for the making of any such Array, nor for any Contribution amongst the Laity for the same.

Having thus cleerly setled this Record of 5. H. 4. as a full Act of Parliament, as well concerning the Powers of Execution over the Persons to be commanded, as the taking away of the Penall Clauses over the Commissioners, There is no further necessity, as to the matter in question, to consider whether or no that this Commission in all or any part thereof be contrary to any of the former Acts of 13. E. 1. 1. E. 3. cap. 5. 25. E. 3. cap. 8. & 4. H. 4. cap. 13. so much insisted upon in the Declaration. For that in such case, the Act of 5. H. 4. being the latter had been a Repeal of them for so much.

Nevertheless, for the further satisfaction of Our people (as being desirous to omit nothing which may be done on Our part for the cleering of the justice of Our Actions) We shall also examine those Statutes so far as they are made use of in this Declaration.

And therein We professe the difficultie hath been more to finde out then to answer the inference made upon these Statutes. For the Declaration

claration reciteth the Statute of 13. E. 1. to be a particular Assize (or Assessement) of Arms, both in respect of the Kinde of Arms to be found, and the proportion of the estate of every man, after which they are to be found, downwards from 15 pounds in Lands and 40 Marks in Goods: And reciteth the Statute of 1 E. 3. That no man from thenceforth shall be charged to arm himself otherwise then he was wont in the time of the Kings Progenitors; and that no man be compelled to go out of his Shire, but where necessity requireth, and sudden coming of strange enemies into the Realm. (Whereupon it is taken for granted, That the statute of 13. E. 1. Was a provision of Arms for defence extraordinary, and that this Statute of 1. E. 3. Was meant with reference thereunto) And also reciteth the statute of the 25. yeer of E. 3. (as to be to the same effect with the former) against the constraining men to finde men of Arms, Hoblers, or Archers, without consent and grant made in Parliament; And lastly, reciteth the Statute of 4. H. 4. (which confirms those two Statutes of 1. E. 3. and 25. E. 3.) And immediately thereupon makes this conclusion which follows; That by these Acts (not distinctly applying the severall matters to the severall Statutes) it cleerly appears, That the King could

not, by the Law, give power to impose Arms upon the Subjects (Which the Declaration calleth sometimes finding of Arms, sometimes finding men at Arms, all of different sences) or to compell them to be drawn out of their Counties: Which afterwards, in Stating the Case, is expressed thus, That the Subject was not compellable to finde any other Arms then was declared by those Statutes, or to go out of their Countie, but in case of Actuall Invasion by Forraign Enemies. Against Which this Commission is said to be.

But for our cleerer passage in this businesse, We shall single out the severall Statutes, with the Objections (as We conceive) intended upon each of them.

For the better understanding whereof, We shall distinguish of the principall Terms in this question used in the Commission and severall Acts of Parliament.

First then, as for the Words of Arming a mans self used in the Commission (as also in the Act of 1. E. 3.) they are litterally to be taken for the providing of Arms for a mans own person, Wherewith he is to serve as a Souldier, either Horseman or Foot-man, of what kind soever; And the finding of Arms for others in the Commission, is but the finding the bare Arms, without providing the men, and are so to be taken here, (in what-

whatsoever sence they may be taken elsewhere,) as may clearly appear upon the very reading. And as for the words (finding of men of Arms, &c.) which are the words used in the Statute of 25. E. 3. they are usually and properly enough taken for the setting forth of Souldiers, the paying of their wages, or contributing towards either of them.

This then being the sence of the words, we now proceed to the Statutes: And first concerning the Statute of 13. E. 1.

Thereupon the Objection against the power of imposing of Arms is this.

This Statute appoints a particular Assize for the kindes of Arms and Proportions, as before. But our Commission doth give power to assesse for the kindes (any Arms) and for the proportions, according to each mans ability, (which the Declaration terms to be without limitation and at pleasure) & so is contrary to this Statute.

To this we Answer; That that Statute of 13. E. 1. was made onely for the ordinary defence of the Kingdom, for the preservation of the peace at ordinary times; and was not intended as a provision of Arms for defence extraordinary: but that for the publique defence in time of Danger, the King might, and must charge

other Arms, and other proportions, according to the exigency of the occasion.

Both which appear together, if we consider that the provision in that Statute mentioned (which might be of use for the Peace) is very insufficient for the Service of War: For we cannot but observe the pettinesse of the Arms, even according to the use of that time; for he that was rated highest by that Act, was to find but a Hawberge (which in that place signifies a Gorget) a breast-plate of Iron, a Sword, a Knife, and a Horse: and others but gisarms (which were Pike-staves) Knives, and other lesse weapons. And yet at that time there were men at Arms, which were Horsemen of compleat Armour, Hoblers, which were Light-horse, and there were Pikes, Lances, Pol-axes, and other weapons commonly used for War.

And no lesse considerable is it to this purpose, That for the charge of this defence no man of what estate soever, is by this Act charged above the rate of 15 pounds in Lands, or 40 Marks in Goods, and he that hath 15 pound in Land, or 40 Marks in Goods is charged as high as the greatest: Which is not to be imagined in case of provision for defence extraordinary.

And

And to cleer this further out of this, and other Acts; it is plain, that this very Act expresseth it self in these words, That every man have in his house Harnesse for to keep the peace: and appoints those who are thereby assessed, to pursue Hues and Cries after Theeves and Robbers, (which went in those times with great strength, and in multitudes) with their Horses and Armour. And the old Articles of inquiry upon that Statute, being made in the same Kings reign (and to be seen in the Statute books) tend only to inquiry touching the keeping the peace: as whether all men betwixt the age of fifteen and sixty be sworn to keep the peace and whether they have weapons in their houses according to the quantity of their Lands and Goods for conservation of the peace, according to the Statute. And the Statute of 2 E. 3. cap. 6. renews this Statute of 13. E. 1. in these words: *Item*, As to the keeping of the peace in time to come, it is ordained and enacted, That the Statutes made in time past, with the Statute of *Wincheſter*, shall be observed and kept in every point. And strange it were to imagine, that the Wisdom of a Parliament, in the matter of arming of the Subject, made no greater or better provision against an Enemy, then

then against a Theef, or a Rogue. And it is not so proper to charge the Subject at all times in the same manner and proportions as in times of danger.

And lastly, for further cleering this Our exposition of that Statute of 13. E. 1. We say, That although (as we have already shewed) the Commissions of Arrayes did, from the time of making the Statute of 13. E. 1. frequently issue both before and since the Statute of 5. H. 4. yet none of those Commissions were regulated by the Statute of 13. E. 1. but either they were (as commonly) for arming them according to mens estates and abilities, without mentioning the Statute of 13. E. 1. Or, Where any did expresse the quality and proportion of Arms to be found, They varied from the Statute of 13. E. 1. and appointed other kinde of Arms, and differenced and proportioned the estates of those who were to find Arms otherwise then is mentioned in that Statute: And sometimes with an expresse Declaration, that the Statute of 13. E. 1. Was made for the conservation of the peace in a time of peace, When there was no danger of a forraign enemy. And though some use might be made of those Arms appointed by that Statute in time of

danger

danger, as well as any other Weapons: yet the same was not that kinde of armour which was principally intended as fitting for such defence; as may appear by the presidents above cited. And the constant practice in all after ages for defence extraordinary hath ever been with other arms, and after other Proportions, as we beleeve will not be denyed by any man.

We now come to the Statute of 1. E. 3. Whereupon the objection stands thus:

That the Statute of 13. E. 1. having made such particular assize of Arms (as before) for the kindes and proportions, this Statute doth ordain, That no man from thenceforth shall be charged to arm himself otherwise then he was wont in the time of the Kings Progenitors: Meaning (as the Declaration takes it for granted) according to that former Statute of 13. E. 1.

To this we shall give this Answer: That (as we have proved before) 13. E. 1. was never meant as of a provision for defence extraordinary: and much lesse that the Statute of 1. E. 3. could intend any such thing.

And as the Penner of the Declaration cannot therein shew any expresse reference to that Statute of 13. E. 1. and can, at the most, but

barely conjecture it; so on the other side, we shall out of the penning and otherwise upon surer grounds conclude the contrary. For first, in this case, regularly, if not necessarily, (where a latter Statute in the substance and meaning thereof wholly depends upon a former, and must have reference thereunto) the Parliament of 1. E. 3. would have made mention of this Statute of 13. E. 1. (as they did thereof) the next yeer following, when it was renewed but for keeping of the peace. Next, in wisdom it was fitting (if so be that they had intended a further re-establishment of the particularities of the kinds and proportions of Arms mentioned in 13. E. 1.) that when they had a former Statute so punctuall therein, they should not have thus left us, for a true understanding of their meaning, to a generall enquiry of the particular assize used for Arms in former times.

2. E. 3 c. 6.

But on the contrary, the Statute referring to the former usage, in the times of the Kings Progenitors (which being indefinitely spoken, we conceive, must be understood of all Kings times as well before as after 13. E. 1.) the usage therein meant is but *Consuetudo Angliæ*, the Common Law: and the Parliament could not,

not, in all probability, in the mention of so ancient an usage intend so late a Statute as this of 13. E. 1. which was but new in the particularity of the Assize, though ancient in the Rule of charging, according to the quantities of every mans Lands and Goods, the former Assizes having bin also different: Nor (considering that of Necessity, the severall kindes & proportions of Arms ever did, and must vary with the times) could they intend, that there ever was, for the times past, or could be for time to come any such constant rule of any such particular assize concerning Arms, whereunto they could refer, as constantly used for the time past, or that might constantly endure for time to come: neither ever was, or can there be any other constant rule, then that generall rule of the Common Law (which can never faile) for the assessing Arms from time to time, for the kindes, according to the present use, and for proportions, according to mens abilities.

And it were very strange, that the Parliament of 1. E. 3. could conceive, That (for the defence extraordinary) the particular kindes of Arms in 13. E. 1. especially such petty provisions, could be proper and sufficient at this time in 1. E. 3. and would so continue afterwards.

And now that we have cleered this first part of the Statute of 1. E. 3. (as concerning the Arming a mans self) that it is not thereby intended, That the Subject should not be charged with Arms, otherwise then according to the Statute of 13. E. 1. We shall deliver, what Our selves conceive of the meaning thereof; And it is thus.

Towards the end of the Reign of E. 2. severall Commissions of Array issued into severall Counties; in execution whereof the Commissioners had much grieved, and oppressed the Subjects. Insomuch, that upon complaint, speciall Commissions of Oyer and Terminer (usuall in those times) were sent forth for the enquiry after those grievances and oppressions. And although it do not appear what those were, yet since the Complaint was not against the Commissions themselves, as illegall, We cannot conceive otherwise, but that it was against the wilfull exceſſe of ỹ Commissioners, in their surcharging the Subjects with Arms beyond their abilities of estate to bear (as charging a man as a Horseman, where it had been sufficient for his estate to have born Arms as a Footman, and the like) contrary to the Tenor of the Commission.

Cl. 19. E 2. n. 17. Dors.

But

But this course producing indeed little effect, in the time of King E. 2. partly out of the favour, which it is likely the Commissioners did finde, and partly by reason of the short remainder of His Reign, there was just occasion, both for Complaint, and Relief in this next Parliament of 1. E. 3. And though the particulars of the Petition in 1. E. 3. and the Answer out of which (according to the manner of those times) the Printed Act was made, do not appear, for the want of the Roll of that Parliament, yet We may well judge thereof upon this occasion, happening within the compasse of about one yeer before, and thereupon conclude, (as for the true meaning of that Act) That the provision intended to be made, was onely against the excesse of the Commissioners; which rather justifies, then any way disproves the Lawfulnesse of such Commission. And so the sence of the Act, applyable to the Complaint, will be, That whereas the Commissioners had over highly taxed the Subjects, the Act provided, That they should not be otherwise charged, then as they had been in the times of former Kings; and (according to Our Commission) moderately, and so as they might live still ac-

cording to their former condition: as in like case of other Statutes against outragious Distresses and Amerciaments.

And although we take this to be the sence of that Statute, yet if any man shall think this part of the Statute of 1. E. 3. Concerning arming a mans self, to be the same with the words of the Statute of 25. E 3. against constraining any man to finde men of Arms, &c. (which is the sence of this Declaration, which makes both Statutes to be to the same effect, and makes the inference against Our power of imposing Arms upon them both) we shall not contradict him therein, being confident to make it evident, that this Commission is no way contrary to the words or meaning of that Statute of 25. E. 3.

But before we come to that Statute, we shall make one Observation upon those Statutes of 13 E. 1. & 1. E. 3. both together: and then upon shew, That in the judgement of the whole Parliament of 4. H. 4. (whose authority is chiefly insisted upon in this Declaration) Our Commission is no way opposed by either of those Statutes: And it is this:

It appeareth, That the late issuing of the Commissioners complained of in 4. H. 4. (which

(which the Declaration ſuppoſeth were of the ſame nature with Our Commiſsion, but We deny it) was the occaſion of the Petition of the Commons in that Parliament.

In which Petition, they intending to ſhew the illegality of thoſe Commiſsions, and to obtain (as they thereupon did) a confirmation of former Acts to the contrary, do recite the Statute of 25. E. 3. 18. E. 3. c. 8. and that part of the Statute of 1. E. 3. which is againſt carrying of men out of their Counties; and yet nevertheleſſe they wholly omit this Statute of 13. E. 1. and this firſt part of the Statute of 1. E. 3. concerning the Arming. Whereas it is to be preſumed, they would have alſo recited this Statute of 13. E. 1. if they had conceived the ſame to be (as this Declaration ſets it forth) the certain Aſsize for Arms, and ſuch a Statute whereto all the reſt had reference, or any way materiall againſt any part of theſe Commiſsions. But howſoever, making uſe of the latter part of the Act of 1. E. 3. againſt carrying of the Subject out of the County, they would have made uſe alſo of this part of 1. E. 3. concerning the Arming, and deſired a confirmation thereof as well as of the reſidue, and not thus purpoſely rejected it, if ſo be they had

had not, upon consideration, first resolved that that part of 1. E. 3. was no wayes against the Commission.

And now we come to the Statute of 25. E. 3. whereupon the Objection stands thus:

By the Statute of 25. E. 3. the Subject is not to be constrained to finde men at Arms, &c. if it be not by common consent and grant made in Parliament. But by this Commission the Commissioners have power, without consent or grant in Parliament, to command those who are able of body and estate to arm themselves: and those who are impotent, but able in estate, to finde Arms for others: (which the Declaration in some places calls finding Arms, and in some places finding men at Arms) and is therefore against that Statute.

For this objection we need do no more then refer Our selves to Our former observation of the different sence of the severall Words of Arming a mans self, and finding Arms for some other, which are the onely Words used in the commands of this Commission, and the Words, finding of a man of Arms, or other compleat Souldier, used in this Statute, and intended to be thereby prohibited: Whereby it will be apparent that arming a mans self, or finding

finding bare Arms for others is not within the letter of this Statute.

Nevertheleſſe, for a more particular Anſwer; 1. as to the firſt of theſe powers in Our Commiſſion concerning Arming a mans ſelf, We ſay, That this Act being againſt finding of armed men or other ſouldiers, doth not any wayes intend to prohibit the compelling of men to arm themſelves, (that is, their own perſons.)

For that had been not only againſt the Common Law, whereof that Act is but declarative, but alſo againſt thoſe Statutes of 13. E. 1. (admitting it provided, as the Declaration ſuppoſeth, for defence extraordinary) & againſt 1. E. 3. by both which Statutes it doth clearly appear, that the Subject is in ſome manner compellable to arm himſelf: And the Act of 25. E. 3. is in generall againſt all finding of men armed at any time. So that in that ſence whatſoever the occaſion is (though it be upon an actuall invaſion of an enemy) he cannot be compelled to finde arms. And that expoſition of the Statute would wholly take away all compulſory means of defence.

Nor will it be ſufficient to anſwer this, That the arming according to thoſe Statutes is aſſented unto in Parliament, and ſo is within the exception of the Statute of 25. E. 3. For the

 conſent

consent in Parliament (intended by this exception) must be understood of future consent in Parliament, as well as the constraining men to finde Souldiers prohibited by the Act is meant of a future finding Souldiers. And in the exception of the Statute of 25. E. 3. There is not onely to be a consent, but also a grant in Parliament, for so the words are (if it be not by common consent & grant in Parliament) but in those Acts of 13 E. 1. & 1. E. 3. there is no colour of a grant made at all. And this Statute being declaratory of the Common Law, as appears by the reason of the Act delivered in the Petition of the Commons in these words, *Car cet est encountre le droit del Realme.* For it is against the right of the Realm, (which is as much as against the fundamentall liberty of the Subject) this Statute of 25. E. 3. must be construed as of the Common Law; and before any Statute.

And Secondly, as for the other part of Our Commission, which is concerning the charging those who are impotent in body, but able in estate, to finde Arms for others: If such finding of bare Arms had been within the letter of that Statute, or the finding of a compleat Souldier by such a man, had been within Our Commission; yet it would have been a harsh

harsh construction, (and doubtlesse contrary to the intention of the makers) by generall Words, which were meant onely for provision in the generall Case, thus to have spared him in this speciall and particular Case of impotency, from contributing to the Defence of the Kingdom, by finding another, as in his place; whilest he is as much, or more concerned then others, who must undergo as much charge, and must also adventure their own persons.

And by the Common Law, whereof (as we have said) this Statute is but declarative, those who were not fit to bear Arms, were notwithstanding chargeable otherwise towards home-defence, as appears by the Presidents already cited, and many more.

And now we shall give the true sence of this Statute of 25. E. 3. And this will best appear upon the end and occasion of the making; which were these.

King E. 3. having had his Treasure exhausted by the French wars, was upon that occasion, inforced to many hard pressures upon his Subjects; So that they had severall times bin charged, with providing and setting forth of Souldiers; and sometimes with maintaining or paying of them: and this in so excessive a manner, as that it cost a County some- V. 18. E. 3. Rot. Parl. n. 11. 20 E. 3. Rot. Parl. n. 12. and others of that time.

times at once a thousand pound; And all this was done with relation onely to a forraign war, wherein the Title of the King to France was onely in question: and nothing which directly concerned the Kingdom of England: against these there was just cause, to make provision by some Law; especially now when the wars were renewing: And accordingly this Statute was made against unposing such charges upon the Subjects.

And what resemblance there is between those cases, and Our Case, of charging the Subjects onely to finde Arms for themselves, or (in case of impotency) for another (as in their stead) and all but for home defence, we refer to every mans Judgement.

And thus we leave these three Statutes of 13. E. 1. 1. E. 3. and 25. E. 3. with this observation, that if it be true, (which the Declaration takes for granted) that they are all to the same effect, that then Our Answer to any of these three is an Answer to the rest.

We are now come to 4. H. 4. being the last of these Statutes, which (in the matter of Arming) are objected against Our Commission, as it stood at Common Law, before 5. H. 4.

And herein we agree, That the Parliament

ment Roll, whereupon the Statute is framed, is truly set forth in the Declaration: yet we conceive that, in Substance, there is no more upon the Roll, then in the Print; though some passages may give some light for the exposition of these other Statutes of 1. E. 3. and 25. E. 3. therein confirmed.

So as this Statute of 4. H. 4. being, in truth, but an Act of bare confirmation, without any additionall explanation, is already answered.

But because the Declaration doth import, That ỹ commissions (which issued lately before 4. H. 4. and were the occasion of that Statute, and are damned thereby, as contrary to the Acts of 1. E. 3. 18. E. 3. and 25. E. 3.) were of the nature of Our Commission, (which yet is not indeavoured to be proved) We shall also give a particular Answer touching those Commissions.

And herein we say, that first it doth not appear, nor is there any reason to presume that any of those Commissions were of the Tenor of Ours; And in case those Commissions did, amongst other Powers, contain also the Powers of Our Commission, touching the imposing Arms upon the Subject, it doth not appear that those Commissions were particu-

larly in those very powers held unlawfull. Both which must (but neither will) be proved, otherwise there can be no application.

But the truth is apparently to be inferred out of the Roll, That upon those Commissions the Subjects were inforced to go, or to finde others to go at their own charges, not only out of their proper Counties, but also (upon occasion of some insurrections) into Wales, which at that time and (untill the Act of Union 27.H.8.) was to some purposes, at least Commonly reputed a distinct Dominion; as appears even by this Parliament Roll, in these words, That none of the said Commons be distrained to go into Wales, or elsewhere out of the Realm, and otherwise: (the usuall phrase in severall Acts of Parliament, being also to this day, the Kingdom of England, and Dominion of Wales.) And such a Commission, we may well admit to be against all those three Statutes, without impeachment of Ours.

9.H.4. R. Parl. n. 17. 6. H.4. R. Parl.n.9 2.H.5.r. Parl.n. 17. 2 H. 4.C. 10

We shall say no more as to this Statute single, but that (as we have observed before) both in the Parliament Roll, and printed Act, the first Clause of 1. E. 3. concerning Arming, being purposely omitted, it shewes that the meer matter of causing the Subject to be Armed, was not the grievance then complained of, or meant to be redressed. Ha-

Having thus far proceeded in Our particular Answers unto the severall Statutes of 13. E. 1. 1. E. 3. 25. E. 3. and 4. H. 4. as they were appliable to the first objection made upon them, against Our imposing of Arms upon the Subject. We shall, in the next place, proceed to the Answer of the other Objection, made against Our Commission, upon the Statutes of 1. E. 3. and 4. H. 4. of Confirmation: (For as to the other Statutes of 13. E. 1. and 25. E. 3. We do not conceive, that they are or can be meant unto this purpose.) Hereupon the Objection is this;

That by the Statute of 1. E. 3. and 4. H. 4. the Subject is not compellable to go out of his County; but in case of the sudden coming of an Enemy, which the Declaration interprets of an actuall Invasion: But this Commission gives Power, not onely to compell the Subject to go out of his County before an actuall invasion (as the case is put in the stating of it) but (as it is expressed in other parts of the Declaration) without Limitation, and at pleasure.

To this Objection Our Answer is; That both the sence of the Statutes, and of the Powers of Our Commission are mistaken. For first, (as We have before stated it) Our

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Commission gives that Power of conducting out of the County, onely against an Enemy, and for defence of the Countrey, in case of imminent Danger, and but when and where it shall be most needfull; (And so not without limitation and at pleasure.)

And secondly, as to the sence of the Statutes, We do deny that the Subject is not compellable to go out of his County, unlesse in case of an actuall invasion, by a forraign Enemy.

And herein, though We have not upon this Commission occasion to dispute it; yet we cannot but observe, That the Declaration allows of no necessity of compelling the Subject out of the proper County, in case of actuall rebellion, but onely against a forraign Enemy, the ground whereof is a mistake (in recitall of the Statute of 1. E. 3. by the Act of confirmation of 4. H. 4.) of the word, And between the two words, necessity and sudden coming, The Act of 1. E. 3. going thus, That no man be distrained to goe out of his County but where necessity requireth and sudden coming of strange enemies into the Realm. And the Act of 4. H. 4. (which as we have before observed, reciteth not the whole Statute of 1. E. 3. but so much thereof, as upon occasion

of

of the late forraign service did then concern the present complaint) being in these words, That none shall be distrained to go out of their County, but onely for the cause of necessity (Of) sudden coming of strange enemies into the Realm.

Whereas, if in this recitall the word (And) had been put in place of the word Of, or before it, both had agreed, and so the sence of the Statute, as to this matter of going out of the County, had been upon 4. H 4. as it is upon 1. E. 3. That no man be compelled to go out of the County, but in case of necessity or coming of enemies: the word (And) in exposition of Statutes being most frequently taken for (Or) according to the Subject matter, and so the Statute had excepted two cases, necessity arising from within (by actuall rebellion) & necessity arising from abroad (by sudden coming of strange enemies:) this exception in both being absolutely necessary for defence of the Realm and according to the Common Law (of which the Statute is but declarative) and the practice both before and since. And indeed it could be no otherwise in property of speech, for there cannot be a cause of necessity of the sudden coming of enemies, but there is a necessity of defence against their coming.

And in this case we are to be guided by the Statute as it was Originally, as it is also truly set forth in the Declaration, and agrees with all printed Statutes both in English and French, and ancient Manuscripts, all of them derived from the Originall Statute Roll which was lost before 4. H. 4. (that which now remains being but a Transcript of a Transcript.)

Thus then, without more, we shall apply Our selves to the Objection as it is made upon the words of 1. E. 3. both in the Originall and the Recitall. And We say That the Subject is compellable to go out of his County for defence of the Kingdom, as necessity shall require, before the Landing or other Entry of the Enemy, to prevent his Landing or Entry.

And for this we shall but recite the words again; And they are these, That no man be compelled to go out of his County, but where necessity requireth and sudden coming of strange enemies into the Realm.

Wherein it seemes to Us most plain, that these words require no such Actuall Landing, or Entry of an Enemy into the Kingdom, before the Subject is Compellable out of his County. For the words of the Act are not (as

to

to this point) When the Enemy is come, but upon the coming, not within the Realm, but into the Realm. And all men know, that in ordinary Speech, a man may be said to be coming into a place when he is upon a remove to a place; but most properly, When he is on his way, especially when he approacheth, with an intention to enter thereunto; and in such sence these words of coming into the Realm must be taken, in this Statute.

But in case the words (of the enemies coming into the Realm) might bear a doubtfull interpretation, that sence must be taken, which agrees with the Common Law before practised, whereof this Act is but Declarative, and the constant practice of all ages since that is, That the Subjects have ever been commanded, and gone out of the County against the Enemy before any Landing or Entry.

And to give this Statute of 1. E. 3. any other sence were against all Common reason, and the rules of government and defence; which is, not to let the Enemy first come in, if it be possible to keepe him out: and it may be much more ease to prevent the coming in to the Land, (especially by Sea, in opposing the Landing) then afterwards to expell him. And it cannot be expected, that the Forces of

one County alone, should be able to resist the entry of a powerfull Enemy.

And lastly, as for those Commissions, which were damned in 4. H. 4. those had no resemblance to Our Case, nor are warranted by the Exception of 1. E. 3. For that (as appeares before) the Subject was then carried out of the County not for defence of the Kingdom, as the Exception of this Statute requires, but for suppression of an Insurrection in Wales, which was not then taken as part of the Realm: and the Prayer of the Commons in 4. H. 4. made upon that Occasion, and therein grounded upon 1. E. 3. was not meerly because they were carried out of the Counties, but because they were carried out of the Realm in a Service, which was not for the necessary defence thereof.

We have thus far, upon this last head of Our discourse, onely Answered the Objections made upon these Statutes of 13. E. 1. 1. E. 3. 25. E. 3. and 4. H. 4. We shall now conclude this part of Our Answer, with a return of all those Statutes against the Declaration, and in justification of Our Commission.

First, as concerning 13. E. 1. since that (as we have before observed) the Statute was made onely with relation to the keeping of the peace

peace, it implies, that there is another rule in the matter of imposing of Arms for defence extraordinary.

Secondly, as for 1. *E.* 3. (besides Our former observation, That in all probability, the Act was made but upon Complaint against the excesse of charging by the Commissioners, and not against the powers of that Commission, which had lately before issued, which rather justifies the Commission then otherwise.) We further say, That if we should admit, that the Statute of 1. *E.* 3. That no man should be charged to arm himself, otherwise then he was wont in the time of the Kings Progenitors, hath any relation unto 13. *E.* 1 & that so the sence therof were, That none should be compelled to finde Arms, otherwise then according to that Statute of 13. *E.* 1. Yet then that Statute of 1. *E.* 3. (as tis plain) must be meant onely as concerning ordinary defence; and that as the Subject is in case of necessity to be carried out of the County, So in that case he may be compelled to be Armed otherwise then at ordinary times.

To this purpose We note, that in the Statute there are two distinct propositions joyned together, one against the Arming of the Subject, the other against going out of the County; And the clause which

is next subjoyned is an exception *Sinon pour cause de necessité, &c.* Vnlesse it be for necessity, and the sudden coming of strange enemies. Which exception, upon such admittance, is not onely appliable to that last clause before, concerning the going out of the County, but as to the Arming: The sence thereupon also being thus; That though in case of ordinary defence, the Subject be not compellable to bear other Arms then according to 13. E. 1. as neither to go out of the proper County; yet for the extraordinary defence of the Kingdom, in case of necessity (wherein more must be done then ordinarily) both, Arms are to be imposed by other rules then in 13. *E.* 1. and also the Subjects are to go out of the County; For so it followeth in the next words of the Act; which are these, And then it shall be done, as hath been used in times past, for the defence of the Realm. And this sence, upon this admittance, clearly appeareth out of the course of former times in such cases, to which the Statute doth refer.

As for 25. E. 3. (besides that the Declaration saith it is to the same effect with 1. *E.* 3. and was made with relation to a forraign War, as we have observed,) if (as the Declaration must admit) that the exception of finding men

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at Armes &c. by Common consent, and grant in Parliament, be intended as well of Acts of Parliament past as to come, then Our Commission, in the power of imposing Armes, being warranted by 1. E. 3. is also warranted by that Act of 25 E. 3.

And for 4. H. 4. (besides what We have before observed, upon the omission therein of the first part of 1. E. 3. concerning imposing of Armes, and that it applies 25. E. 3. but to a forraign war) the generall sence, & Judgement of that Parliament, excepting then onely against other Commissions, seems to allow of this; for that otherwise, it is not to be imagined, that immediately in the same yeer, there should issue out a Commission of Array, and in the next yeer, there should issue out that other which was corrected in 5. H. 4. both of the same form, and the latter bearing Teste the day of the Summons of the Parliament of 5. H. 4. And that at that Parliament, though some amendments were made in it, yet no exception should be taken to the legality of the powers: Whilest (as the Declaration observes) it is probable, That many of the House of Commons, and it is certain that most of the House of Lords, were members of the Parliament of 4. H. 4. and knew the meaning thereof. 4 H. 4. rot. Parl. part. 2. m. 10.

And

And thus we have answered to the full satisfaction (as we hope) of all indifferent Judgements, the severall Objections made against the legality of Our Commission of Array as it stood before, and at the making of the Act of 5. H. 4. and thereby proved, That Our Commission was warranted by the Common Law, That the powers thereof remain untouched by the Statutes of 1. E. 3. 25. E. 3. or 4. H. 4. And that it was afterwards allowed and setled (as a rule or pattern, whereby Commissions should issue in after ages) by the Act of Parliament of 5. H. 4.

We have yet some other Objections in Our way, which admitting the legality of Our Commission as it stood in 5. H. 4. are made against it upon some latter Acts.

The first in time is upon the Statute of 4. & 5. P. & M. c. 4. which settles an assize and proportion of Men, Horses, and Arms, which every man was to finde; which the Declaration saith was without Question, a repeal of this Statute of 5. H. 4. And accordingly, we shall take that first into consideration, For though upon the repeal of that Statute by 1. Iac. c. 25. the Declaration agrees, That Our Commission, if once setled by 5. H. 4. is now again in force, Yet an inference is made from thence, That the Parliament

ment of 1. Jac. would never have repealed that Statute of 4 & 5 P. & M. if they had thought that any such power of imposing Arms, as is in the Commission, would have been thereupon revived.

The words of the Statute of 4 & 5. P. & M. cap. 2. are these. Be it enacted, &c. That as much of all and every Act and Statute concerning onely the keeping or finding of Horse, Horses, or Armour, or any of them heretofore made and provided, and all and every forfeiture or penalty concerning onely the same, shall be from henceforth utterly void, repealed, and of none effect.

To this we say, first, that 4. & 5. Phil. & Mar. doth not repeal 5. H. 4. either by the words or meaning.

As to the words, They extend onely to a repeal of such Acts which do appoint particular Assizes (or Assessements) of Arms: all which upon that Statute of 4. & 5. Ph. & M. (which appoints a new Assize for kinde of Arms and proportions) would be either contrary or altogether useless. And to that purpose the Statute speaks of repealing of Acts concerning keeping or finding of Horse, Horses, or Armour, which, as it must be meant of Acts concerning keeping or finding of Horses in particular for kinde or number; So as concerning (armour)

in generall, it must, by the constant Rules of construction of Statutes, be meant of Acts of the like nature as the former, that is, Acts concerning the appointment of some particular armours, as a Gorget, a Brest-plate, and the like, such as were the Statute of 13. E. 1. and 33. H. 8.

But this Statute of 5. H. 4. is nothing concerning the appointment of any particulars, either for the kinde of Arms or proportions: but doth onely enact a Commission issuable, without commanding that it shall issue, which is referred to the Kings pleasure (upon a lawfull occasion) Nor doth the Commission it self mention (as is apparent) any particularity of Arms or proportions.

And if the Statute of 4. and 5. Ph. & M. were meant of such Statutes, as speake of finding Arms in generall, it had as well repealed the Statutes of 1. E. 3. 25. & 3. and 4. H. 4. as this Act of 5. H. 4. which no man will say was ever intended.

But in truth, this Commission being in generall, doth no wayes contrary this Statute of Ph. & M. but that the particulars of the Assessement by that Act, both for the severall Kinds of Arms and proportions, might have

have been very well put in Execution by this Commission.

For the Commission gives Power to assesse every man *juxta statum & facultates*, According to his degree and Ability. And this Parliament of 4. and 5. Ph. & Ma. appointing Arms fitting for defence of the Kingdom in those times, and proportions fitting (in their Judgements) for the severall degrees and abilities of every man; That Act did not thereby take away the power of the Commissioners wholly, but did onely give particular rules for the kinde of Arms and proportions, which the Commissioners were to observe in the execution of their power, thereby onely regulating, but not destroying their powers.

And if this Statute of 4. & 5 P. & M. had taken away the first Powers of the Commissioners concerning arming, yet had it not taken away the other severall and independent Powers of Arraying, Training, Mustering, or Conducting those men so furnished according to that Statute, but that they had remained to have been executed (at least by a distinct Commission which might have been issued at pleasure for that purpose.)

And this also appears by the Statute of the same Parliament of 4 & 5 P. & M. cap. 3. (Which

is in force at this day) which being concerning mustering, hath occasion to mention, and doth expresse the old power still remaining to issue Commissions of that nature; in these words, That if any person that shall be commanded at any time hereafter generally or especially to muster afore any such who shall have authority or commandment for the same, by, or from the King or Queens Majestie, or the heirs or successors of the Queens Majestie, or by any Lievtenant, &c. do absent himself, or at his appearance do not bring his best furniture of Array and Arms as he shall then have for his person in readinesse, shall be imprisoned, &c.

But neither by that nor the other Statute of P. & M. cap. 2. is there any new authority given to the King to grant Commissions for Musters, but the same is admitted to continue as not repealed. And as to that point of appearing at Musters, We made use of that Statute of 4 & 5 P. & M. cap. 3. in Our Proclamation: And do wonder how the Penner of that Declaration could imagine, We meant any such further use therein upon that Statute, as the Declaration sets forth.

And here by the way We observe a mention in this Statute, of 4 & 5 P. & M cap. 3. of a power of mustering in Lievtenants, to whom other Powers contained in Our Commission were

were also granted, and might have been also mentioned in this Statute, if there had been occasion.

And secondly, as to this Statute of 4. & 5. P. & M. c. 2. We say, That in case that Act of 5 H. 4. had been repealed by 4 & 5 P. & M. yet this Commission had still continued in force notwithstanding any bare repeal; for that (as We have proved) this commission was (before that Satute) warranted by the Common Law, which did still remain in force so far as it was not expresly contrary to the further particulars of that Act.

And now we come to the Objection principally intended against this Commission upon the alteration of the Law at this day since 5. H. 4. Wherein the case is this.

The Statute of 13. E. 1. made an assize of Arms for the severall kindes and proportions according to mens severall estates. Then 5 H. 4. enacts this Commission with power to assesse men according to their abilities. Afterwards 13. E. 1. is repealed by 21 Jac.

The Argument hereupon in the Declaration is made thus:

That the Commission, as to the finding of Arms *luxta statum & facultates*, is so grounded upon that Statute of 13. E. 1. (which was then

in force, and did enact the finding of Arms *juxta statum & facultates*, in manner as is therein expressed) that that Statute of 13. E. 1. being since repealed, that Commission is likewise repealed, and become unwarrantable at this day.

For answer whereunto, in the first place, we do deny that this Commission is any wayes grounded upon 13. *E.* 1. First, for that (as we have proved) 13. E. 1. originally was not meant, as a provision of Arms for defence extraordinary, much lesse so intended here.

Secondly, if it were for defence extraordinary, yet neither this Act of 5. H. 4. nor the Commission thereby setled, have any relation thereunto in words, much lesse in meaning.

For the words, There is no mention of 13. E. 1. either in the Act or Commission, but the words of the Commission are generall, for imposing Arms *secundum statum & facultates*; According to every mans degree & ability, without limitation, of the kinde of Arms, or particular severall proportions of estates.

And for the meaning, We cannot conceive it to be lesse, then according to the full extent of the words, For there is lesse reason to imagine that the Parliament of 5. H. 4. did any wayes intend the assize of Arms established by 13. E. 1. then there was to imagine the like upon the Act

Act of 1. E. 3. for that between 1. E. 3. and 5. H. 4. all kinde of Arms were more altered then betwixt 13. E. 1. and 1. E. 3. and in this space of time, Guns were come into use in England, which were both necessary to be commanded and provided against by other arms.

And to avoid Repetitions, we further refer Our self, in these two particulars, to what We before observed upon the Statute of 1. E. 3.

And as for any restraint of those generall words of Our Commission, by any construction of Law to the particular assize of 13. E. 1. We say, That though a subsequent particular Act may restrain the generall words of a Commission (as We have said before, upon the Statute of 4. and 5. Ph. & M.) because the subsequent Act, as it may take away, so it may limit any Power given either by Common Law or Statute, yet a precedent particular Act (upon the same reason, because it hath no such Power) doth not regularly restrain the generall words of a subsequent Statute, which hath Power to controll the former; and (as in Our case) where the meaning appears to be as large as the words cannot possibly restrain them.

But in this we need not labour, For though the Declaration in making way for this Ob-

Objection, admits the Commission, to have some colour to be legall, as grounded upon 13. E. 1. as to that part of finding Arms *juxta statum & facultates*: yet it is the main and throughout ground of the Declaration, That this Commission, because it is generall, is against the Statute of 13. E. 1. and the other Statutes, and so void; whereas, if the Commission had been restrained to 13. E. 1. then it could not have been void as contrary thereunto.

But, admitting that this Commission was, by construction of Law, necessarily to be regulated according to 13. E. 1. whilest that Statute was in force. Our Answer is, that nevertheless this Commission did not fall by the repeal of that Statute.

Wherein We shall admit (which the Declaration supposeth, though by Us it is disproved) That this Commission was not warranted at the Common Law before the Statute of 5. H. 4. and then the Case is but this.

The Statute of 13. *E.* 1. doth appoint a particular Assize of Arms for kindes and proportions, according to this necessary rule, the arms for the kinde shall be fit for defence; and for the proportion, shall bee according to mens abilities (for such is the Act.) Afterwards 5. Hen. 4. doth establish this Commission,

miſsion, wherein there is no particular reference unto this Statute of 13. E. 1. but the rule is generall to charge Arms, for the kinds, according to the uſe of the time (for that is neceſſarily implyed) and for the proportions, according to mens degrees and abilities: Which are equall rules ſit ever to continue, though the kindes and proportions, may and muſt alter.

In this caſe we do agree, That if the Commiſſion had expreſſely referred to charge according to that Statute of 13. E. 1. then that Commiſſion could have been no longer of force then the Statute had continued. For then it had been no more in ſubſtance, then if the powers had been but particular, to charge certain Arms, and in certain proportions according to that Statute. And in this ſence we muſt agree with the Declaration, That a Commiſſion being ſo grounded upon a Statute, upon the Repeal of the Statute, both fall together.

But in this caſe, (thus admitted) where the Commiſsion is generall, and if 13 E. 1. had never been, muſt have had its full operation, according to the words, both for the kinde of Arms and proportions, and was regulated but by a bare conſtruction of Law, both for Arms and

Proportions by 13. E. 1. which the Parliament might think fit to be a rule for that time; it seems strongly to follow, that when 13. E. 1. (which was the onely impediment why it did not work according to the extent of the words) is repealed, the operation of the Law upon this Commission, by force of that statute must likewise cease: and the Commission must be construed according to the words, the rather for avoiding of this mischief, that otherwise the Kingdom should be without all necessary means to put it into a posture of defence, which that Act did intend principally and perpetually to provide for.

But more fully to take off this Objection, We must here remember (what we have proved before) that the Powers of this Commission in the latitude of the words thereof for imposing Arms, *secundum statum & facultates*, according to mens degrees and abilities, was warranted at the Common Law before any Statute, and was to be executed without the direction of any particular Assize for kindes and proportions: As at this day severall like powers for assessing men both by statute and Common Law according to their abilities, as for high ways, poore of the Parish, and the like are to be executed.

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These then being the Powers at Common Law, As it is cleer they are not taken away by any affirmative Statute, (such as 13. E. 1. seems to be:) So if We shall admit (as strongest against Our self) that there were any negative words in this Statute or any other Statute grounded thereupon, that the Subject should not be compellable to be armed otherwise, (which other Statutes (according to the ground rightly taken in the Declaration) must necessarily fall by the repeal of 1 E. 3. 1.) Then that Statute being repealed, the Commission thus freed of those Statutes, remains in full force as it was at the Common Law.

And now that We have passed over the Acts of Our Predecessors as well before as after the Act of 5. H. 4. We are incountred with Our own Acts, the Petition of Right, and a Recitall in an Act this present Parliament, as being both against Our Commission.

Whereunto We need to say but this. That it appears out of themselves, that neither of them were ever meant to introduce a new Law: So as if (as We have proved) Our Commission be not against the Law, as it stood formerly, they were not intended nor justly ought to be extended against it. But to give yet more par-

ticular and full answers thereunto; We say, First, for the Petition of Right, it no wayes extends to our Commissions of Array.

The Objection made upon it stands thus. The Petition of Right sets forth, That by the Laws and Statutes of this Realm, the Subjects have inherited this Freedom, That they should not be compelled to contribute to any Tax, Tallage, Aide, or other like charge, not set by common consent in Parliament. And after complains, That divers charges have been laid and levied upon the People by Lords Lievtenants, Deputy Lievtenants, Commissioners for Musters, Justices of Peace, and others, by command or direction from Us, or Our Privie Councell, against the Laws and free Customes of the Realm, which the Declaration alleadgeth to be the breach of those Laws.

Then the words of the Petition are thus applyed, That here is a Tax or Charge imposed upon the people, by Compelling them to finde Arms by command and direction from Us, under Our great Seal, without consent in Parliament

And the meaning of the Petition is thus inforced, That it is very well known, and doth sufficiently appear, that the charges there men-

mentioned to be laid by Lords Lievtenants, and Deputy Lievtenants, were the charging of the Subjects with Arms against Law, by colour of their Commission from Us, and consequently this Commission is against the Petition of Right.

For Our cleerer Answer, We shall set down the summe of the Petition, for so much as concerns the unlawfull charging of the Subject. And it is this,

First, the Petition recites severall Statutes, as made against the compelling the Subject to the making or yeelding any Gift, Loan, Benevolence, Taxes, Aides, or such like Charges without Common consent in Parliament; And next setteth forth a violation of those Statutes, by the Commissions of Loanes, and Execution of them; and that divers other Charges had been laid & levied by Lords Lievtenants, and others (as is aforesaid) And lastly the Prayer is substantively of it self, without any relative words, yet extends to all that was before complained of, and containes the substance of all those former Statutes in these words, That no man be compelled, to make or yeeld any Gift, Loan, Benevolence, Tax, or such like Charge without common consent by Act of Parliament. And Our Answer to that

part of the Prayer, amongst the rest, is, Let right be done as is desired. And Our Answer to the Objection stands thus.

First, that whatsoever sence any words of the Preamble may seeme to import, yet without question, there is no more in this Preamble then is after contained in the Prayer: So if Our Commission be not against the Prayer, there can be no Argument against it drawn out of the Preamble, or if in truth there were more in the Preamble then in the Prayer, (whereunto onely the Royall assent extends,) yet nothing could bindingly be concluded thereupon (as We shall further shew upon occasion.)

This then onely rests to be considered upon this Objection; whether the powers, in Our Commission, to compell the Subjects, able of body and estate to Arm themselves, and in case of impotency to finde Arms for others, for the necessary defence of the Kingdom, can be said to be a compelling of the subject, to make or yeeld any Guift, Loan, Benevolence, Tax, or other like Charge, contrary to the Prayer of the Petition.

Upon the Case thus truly stated, it is cleere, That here is no yeelding or making of Guift, Benevolence, or Loan; And as for making or yeelding any Tax or other like charge, though it be true, That this arming a mans self, or finding Arms for another,

another, cannot be done without Charge: Yet We appeal to every mans understanding, Whether Our Subjects can, upon this Commission, be said to make or yeeld (for so are the words) any tax or other Charge against the Petition, any more, then if We command a City to repair their Walls, or a Levell (putting the Case before any statute, to take away all colour of evasion) to repair the Sea-banks, when they were in decay, being no particular advantage to Us, but for the Common good of themselves.

The truth is, That albeit the imposing of divers charges, and commanding divers Acts drawing charges upon the Subject, though possibly for their advantage, are void in Law: notwithstanding it doth not follow that they are void as against this Petition. For the Petition of Right as against the charges therein mentioned, is onely to be intended of Money, or other thing valuable, & to be parted with to or for Us, or Our advantage: such as are all the charges more specially mentioned in the preamble & Prayer, as that of Gift, Loan, and Benevolences, And such as were those Charges intended in the Preamble under the generall expression of divers other Charges imposed by Lord Lieutenants, &c. Which We think

think is very well known to most Counties, to have been meer Pecuniary Payments, and which we ought to have born. And for the other charges, that is, of taxes, tallages, aydes likewise mentioned, which as to this purpose are but Synonoma, and of one signification, they are meant of money or other things valuable, and for the King; and so used in the old Statutes, and had been in former times imposed upon the people, without Act of Parliament; and accordingly all of them are so to be expounded in the Preamble. And the Prayer of the Petition saith nothing expressely against the Commanding the Subject to do a thing which may be necessarily of expence or Charge, (wherein the Act is onely intended, and the Charge but a necessary Incident) but the Prayer is onely against the compelling of the Subject to yeeld, or make those kindes of charges: So as the cleer sence of the Petition, both according to the occasion of complaint therein mentioned, and the Laws whereupon it is framed, as well as the propriety of the words, is only against drawing from the Subject, either money or money-worth, by any of those particular charges therein mentioned, or any other charge of like nature (under what specious title soever) for the Kings advantage,

tage, which the more plainly appears, for that the charge must be yeelded or made, as upon Gift, Loan, &c. which must necessarily be intended unto some person, and no other person can be here colourably intended but the King.

And if the Petition, by any construction, may extend against the commanding of any Acts, which in the execution may induce charges, yet such charges must (according to the very words of the Petition) be such like Charges, that is for Us or Our advantage, as the particular Charges therein mentioned, of Gift, Loan, &c. But this charging of the Subject with Armes for the necessary defence of the Kingdom cannot be said for Our particular advantage, all Our Subjects having therein a common interest.

As for the meaning of the Petition inforced in the Objection from the Charges by Lord Lievtenants, and others complained against in the Preamble, sure We are that those must be such in the particular, as are after contained in the generall words of the Prayer, to which we have answered before: And though it be to this purpose said in the Declaration, That those Charges by Lord Lievtenants and others, were meant of charging of the Subject

with Arms, certainly no such thing can appear in the Petition, which speaks but only of divers charges, but names none in particular; nor can there be any other assurance that the Houses did intend any such thing, but by Votes, wherein they onely speak: and if any such Votes had been, we doubt not but we should have found them inserted in this Declaration: And a particular complaint of so great a grievance (as Our Commission is made to be) would have been expressed in the Preamble of the Petition, with the Quotations of Statutes to the contrary, as was done concerning other grievances. But in truth it is well known, That about that time, upon occasion of Our Wars, there were divers other charges imposed by Our Lieutenants, and others, of a far differing nature, most of which were by direction from Us or Our Privie Councell, according to the exigency of the time and some former practice.

And we do beleeve, that there was at that time neither complaint or occasion of complaint against the imposing of Arms for home defence of the Kingdom. Howsoever we are sure that no such complaint was particularly represented unto Us, or Our Answer intended thereunto.

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And now to cleer this sence of the Petition out of the judgement of both Our Houses this very Parliament, We demand this Question: If so be the imposing Arms for defence be a charge upon the Subject within the meaning of this Petition, how the two Houses will justifie their Ordinance, which we are sure they will not call an Act of Parliament; for without an Act of Parliament, no charge thereby provided against, can be imposed upon the Subject, the words being plain, That no man shall be compelled to make or yeeld any Gift, Loan, Benevolence, Tax, or other such like charge, without common consent by Act of Parliament.

And now, since this Declaration hath given Us such occasion to examine Our Commission upon the Petition of Right, we shall conclude, out of that Petition, That that Parliament did conceive the powers of this Commission warrantable in every point.

For it is plainly to be observed, that the Commons did then take into consideration the generall grievances of the Kingdom, more particularly, concerning Military affaires, and therein the actions of Lord Lieutenants, and deputy Lieutenants with their Commissions and powers, & their exceeding of their

power, as expreſſely the billeting of Souldiers, and the payment of Billet-money, Muſter-maſters fees, and others of that nature, were then in diſpute. And although the two Houſes could not but take notice of the impoſing of Arms upon the Subject by our Commiſſion of Lieutenancy, and their powers to Levy, call together, Arm, Array, Train, & Muſter Our Subjects inhabiting in Our ſeverall Counties, and to conduct and lead them againſt all Our Enemies, and all Rebels and Traytors, from time to time, as need ſhould require, (in which particulars they contained the powers of Our Commiſsion of Array:) Yet the Complaint was not made againſt them, for what they did by vertue of their Commiſſion (no more then againſt the Juſtices of Peace, though complained of, together with the Lieutenants) but for matters wherein they did exceed their Commiſsion, upon the Command, or direction from Us, or Our Councell; the Petition throughout diſtinguiſhing betwixt ſuch Commands, or directions, and Our Commiſsions.

So that We conclude, here was not onely an admiſſion, but an approbation of thoſe powers, by that Parliament.

We come now to the recitall in the Preamble

ble of the late Statute made this Parliament. The words are these.

For as much as great Commotions, and Rebellions have been lately raised and stirred up in His Majesties Kingdom of Ireland, by the wicked plots and conspiracies, of divers of His Majesties Subjects there (being trayterously affected) to the great endangering, not onely of the said Kingdom, but also of this Kingdom of England, unlesse a speedy course be taken for the preventing thereof, And for the raising and pressing of men for those Services. And wheras, by the Laws of this Realm, none of His Majesties Subjects ought to be impressed, or compelled to go out of His County, to serve as a Souldiour in the Wars, except in case of necessity of the sudden coming in of strange Enemies into the Kingdom, or except they be otherwise bound by the Tenure of their Lands or possessions &c. (upon which Preamble, there is, in that Statute, some provision made for a time for raising and impressing men for those Services.)

And upon this Preamble, the conclusion is made in these words, That this Commission is directly contrary to this Declaration is so evident, that it requireth no application.

To this Objection, we say, we might make Our Answer as short as the inference is, by affirming, That it is evident, that this Commission is not contrary to this recital,

ſall; And ſurely we thinke that what we have already opened, being applied to this Objection, would Wartant that Anſwer.

But that we may leave nothing undone, that may tend towards the full ſatisfaction of Our good people, We ſhall alſo give this a particular anſwer.

Firſt, We ſay, That if this recitall had been an Act, yet there were nothing in Our Commiſsion contrary to the letter of it, for that by this Commiſsion, no man is compellable by any ſpeciall words to go out of his County.

And the generall words, (giving power to the Commiſsioners, for leading them to the Sea-coaſt or elſewhere (as We have often repeated) are with theſe limitations: They are to lead them, but when there is imminent Danger of enemies, for defence of the Kingdom; and then onely they are to be led to ſuch places, as ſhall be neceſſary for the expulſion, vanquiſhing, and deſtruction of the ſaid enemies, And this is a caſe of neceſſity both within the words of this recitall, and according to the ſence of the ſame words, in the Statute of 1. E. 3. and 4. H. 4. (therein meant) as we have before ſhewed.

And thus We might leave this Objection, but that it implies a matter of a greater conſequence then plainly appears. That recitalls of

of the Law, in Preambles of Statutes are binding; For in this Objection, this recitall is called a Declaration of the Law & Our Commission said to be contrary to that Statute, and it further implies, That even in the greatest and most horrid Rebellion, the Subject cannot be compelled out of the County, for the suppression thereof. But to this We answer, That the difference is apparent, betWeen an Act of Parliament declarative, and a recitall in a Preamble: For such an Act (in any matter though mistaken) being assented unto by Us, and Our tWo Houses, is equally binding (as having equall authority) With an Act introductive of a neW Law, But the recitall in a Preamble, is no part of the Act (the Royall assent being onely to that, Which is expressly or tacitely prayed to be enacted:) Nor can it any Wayes so much as imply Our opinion: For otherWise, Kings must be inforced oftentimes to deny a good Law, for an ill Preamble; The consequence Whereof is great in such an Act as requires expedition, Where a Bill once denyed, is not regularly to be offered again in that Session of Parliament.

And if it Were needfull, divers mistakes of the Law in Preambles might be produced, by Which We Would be loath to bind Our Subjects.

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Nevertheleſſe, though Preambles be not in themſelves ſufficient to declare Laws, yet we deny not they are of good uſe, though not convincing Arguments to expound them.

And for Our power in the matter of Rebellion, beſides what hath been ſaid, we might alſo adde (if it were materiall to this Commiſſion,) Preambles, Recitals, and other neceſſary Inferences out of other Statutes (made ſince thoſe intended in this Recitall) which would prove, that in caſe of Rebellion, all Our Subjects ought to aſſiſt Us, and to attend Our Perſon, upon Our command, for the defence thereof, whenſoever We ſhould require it.

See 11. *H.* 7. in the Preamble, That the Subjects, by the duty of their Allegiance, are bound to ſerve their Prince in his Wars, for the defence of Him and the Land, againſt every Rebellion, Power, and Might, reared againſt him. And 11 *H.* 7. *c.* 18. Whereas every Subject, by the duty of his Allegiance, is bound to aſſiſt the King at all ſeaſons when need ſhall require; & moſt eſpecially ſuch as have by him promotion or advancement, as Grants, and Gifts of Offices, Fees, and Annuities, which are, and verily be bound by reaſon to give their attendance upon his Royall Perſon, to defend the ſame, when he ſhall fortune to go in his Perſon in wars for defence of the Realm, or againſt his Rebels and enemies. And 5. *El.* cap. 5. Be it enacted in favour of Fiſhermen, and Mariners, That none of them ſhall hereafter at any time be compelled againſt his or their will, to ſerve as a Souldier upon the Land or Sea, otherwiſe then as a Mariner, except it ſhall be to ſerve under any Captain of ſome Ship or Veſſell for landing, to do ſome eſpeciall exploit, which Mariners have uſed to do, or under any other perſon, having authority to withſtand any Invaſion of Enemies, or to ſubdue any Rebellion within the Realm. And ſee 19. *H.* 7. cap. 1. 2 & 3 *E.* 6. c. 2. And 4 & 5 *Ph.* & *Mar.* c. 3.

And the truth is, the occasion of this Act, now urged against us, appears to be for the service of Ireland, and the intention of it (for so much as is the enacting part) was to take away all question concerning the pressing of the Subjects of England for the suppression of the Rebellion in Ireland. And so concerned forraign service, and not home defence, either against Invasion of Enemies or Rebels.

And thus far the work of the Declaration hath been to overthrow Our Commission by Statutes alleaged to be directly against it. There remains yet some other Objections drawn from the opinion of former Parliaments, and the practice of Our selves and Our Predecessors, and those not directly, but by inferences. But these, as we shall shew, are so far from concluding against Our Commission, that they rather prove the contrary.

The first of these Objections is upon the Statutes of 1. Jac. c. 25. and 21. Jac. c. 28. of Repeales: And is thus, That the Statute of 4 & 5. Ph. & M. cap. 2. having repealed this Commission (for so the Declaration supposeth) They had shewed little care of their own and the Subjects liberty, in the Parliament of 1. Jac. to repeal that Statute thereby to revive the power of this Commission, which would

have subjected the people to far greater bondage: & from thence infereth, That it is not probable that the Parliament of 1. Jac. would have repealed 4 & 5 Ph. & M.: As likewise from the Statute of 21 Jac. (which) repealed the Statutes of 13. E. 1. and 33. H. 8.) That it is not probable, that the Parliament of 21. Jac. would have repealed those Statutes (which in a moderate manner proportioned the Arms every man was to finde in certainty:) And suffer an Act (meaning this of 5 H. 4.) to continue, which established a power in the King without limitation, not only to impose Arms, but to command the persons of the Subjects at pleasure.

To this We say, that both the grounds of this Objection are mistaken. For (as We have already shewed) neither is this Commission repealed by the Act of 4 & 5 P. & M. Nor is there any such unlimited Power given, or Bondage by it, as is pretended. And therefore Our Answer is, That it is no Wonder that those Parliaments might repeal 4 & 5 P. & M. as too hard; and 13 E. 1. & 33 H. 8. as of no use: and put the Militia of this Kingdom again wholly under the powers of this Commission, (being so indifferent between both the other:) And indeed the Militia did after continue under Lieutenants, who had in effect

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the powers given by this Commission.

And now we shall return this Objection thus:

That those Parliaments of 1 Jac. and 21. Jac. would have shewed little care of the safety and defence of the Kingdom to have repealed those Statutes which made provision for Arms, if they had thought there were no Law or Power left in the King to charge men with Arms for defence of the Kingdom, (as the Declaration affirmes the Law now to be.)

But whosoever considers that at that time, and long before, the power of imposing arms, was put in execution by Lievtenants, and Deputy-Lievtenants, by authority of their Commissions (which to this purpose are the same with Our Commissions of Array) and that this power was not complained of in those Parliaments, must conclude it more then probable, that those Parliaments did then conceive there was a sufficient power remaining in the King to impose Arms.

The next Objection, is from the opinion of the Parliament of 4. and 5. Philip & Mary, c. 3. That if Our Commission had been authorized by Act of Parliament, that Statute of Ph & Mar. had been to little purpose, whereby the penalty of Imprisonment for ten dayes, or

forty shillings is imposed upon such, as do not appear at Musters, being Summoned thereunto, by the Kings Commissioners authorized for that purpose: Intimating, as that the Act of Phil. & Mar. would never have been made, if they had then conceived, that we had power to grant such Commissions.

To this We answer, That the particular Arms and proportions of Arms, were then before appointed by the Statute of 4. and 5. Ph. & Mar. Cap. 2. under certain penalties upon those who should be defective, and so a great part of the care of the Commissioners of Array was supplyed by the provision of that Statute; and the Commissions of Array being not so proper, but in time of Danger, and of a larger extent, then the power of mustering, a Commission of Muster (which is part of the power of a Commission of Array) would then serve the ordinary turn: and for every ordinary default, but as a Muster, in a time of no Danger, the punishment by 4. and 5. Phi. & Mar. cap. 3. was great enough).

And for return of this Objection, we say, (as we observed before) That this Statute gives no new power, to grant Commissions for Musters, but admits the power to grant such Commissions to have been in the King

before

before that time. And whereas the Statute of 13. R. 2. appoints no other Officers but the Constables for view of arms, it appears by these Statutes of Phil. and Mar. that the King might appoint his Commissioners: Which he could not, if this power of Arms had been wholly grounded upon that Statute.

The Last Objection of this nature, is grounded upon the Common opinion or practice; And is this.

That the Commissions of Lieutenancy, so grievous to the people, and declared illegall in Parliament, had not been so often issued, and so much prest upon them, if the Commission of Array, not much differing from it in power, and not at all lesse grievous to the Subject, might, by the warrant and authority of the Laws of this Realm, have supplied their room.

To this Our Answer is, That it stands upon two grounds: First, That the Commissions of Lieutenancy were grievous; Secondly, That they were illegall: both which so far forth at least as to the powers wherein they did not exceed the power of this Commission (for the other powers are not now in question) are clearly mistaken.

For, as for the grievousnesse, We say these

Commissions were such as had been long used in the happiest times of Our Predecessors, and continued to Our Time: And such grievances, as did or might arise in the execution of these Commissions, not warranted by them, are no cause to quarrell at the Commissions themselves, more then at the Commissions of Peace, because some Justices of Peace have exceeded or abused their authority. And howsoever, Those powers wherein they exceeded not our Commission of Array could not be grievous, as We have already shewed.

And as for the illegality of those powers, We shall not, nor will Our people be satisfied by bare Votes, that they are illegall, The same being done, without hearing of Our Councell, and without advising with the Judges and demanding their opinions, (a course which was formerly used in Parliaments, as appears even by this Record of 5. H. 4. amongst many others, but in matters of Law, which have of late risen in Our houses of Parliament hath (for what cause We know not been laid aside.) But We again say, these powers in Our Commissions of Lieutenancies are legall, and if there be any clauses in such Commissions which are illegall, those clauses couldnot atall make the Commissions void, for

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so much as was legall, much lesse take away Our power of granting new Commissions, omitting such clauses.

But if We should, for this time, admit the grounds of this Objection, That Our Commissions of Lieutenancy had been such as this Declaration would have them, yet it is but a very inconsequent Argument, That those Commissions would not have issued, so often, and been so much pressed, if the Commissions of Array had been Legall.

For the Commissions of Lieutenancy conteyned not onely most of the powers of the Commission of Array, but in many things exceeded them, and were issuable in times of Peace, whereas Commissions of Array commonly issued in times of Danger onely.

But on the contrary, (that We may retort this Objection also,) since that the Commissions of Lieutenancy, not much differing from the Commissions of Array in Power, (as the Declaration saith) and in many things exceeding them, have so often issued in the reignes of severall of Our Predecessors, and were allowed by the Judges of those times, obeyed without dispute, and not questioned in the Parliament of 1 Jac. or 21 Jac. nor were these powers where in they agreed with the

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Commission of Array complained of by the Petition of Right, but rather admitted and allowed, as we have already shewed. It may very well be inferred that both the Commissions of Lieutenantry and of Array, (as to those powers at least wherein they agreed) were Legall and far from being any grievance to the Subject.

Thus far we have proceeded in the Examination and clearing of the Objections made against our Commissions of Array. Upon all which Objections, we shall further observe That although the Declaration denies our power at this day to command to Trayne or Exercise, yet none of those Objections touch any thing upon those Powers. So that if all were true which is Objected, yet We should still have power (at least by a distinct Commission) to command Our Subjects to be Disciplined, Mustered, Trayned and Exercised, with such Arms as they had in a readinesse, for that (as we have shewed before) these are distinct from the power of Imposing of Arms, and may be severally granted or executed.

And now upon the whole matter, the state of Our case is this. It is Voted by Our Houses of Parliament, That Our Kingdom is in imminent danger of destruction from enemies

enemies abroad, and a discontented Party at home; and that there is a necessitie to put Our people into a posture of Defence

In this case, for defence of Our selves and Our Kingdom, We have awarded Our Commissions of Array, thereby giving power to the Commissioners (persons, We hope, beyond exception) to cause Our Subjects to arm themselves, or if impotent in body, to finde arms for others, according to their abilities, in a reasonable and moderate proportion, and to muster and train them at convenient times and places, and afterwards, upon occasion to lead them, where there is a necessity for the defence of the Kingdom, and the Expulsion, vanquishing, and Destruction of Enemies.

And We have shewed, That the Powers of these Commissions, are grounded upon the very principles of government, and that without them, We could not defend, and protect Our Subjects, (as We are bound by Our oath at Our Coronation) That they are warranted by the Antient Common Law, allowed by the constant practise of former ages established by the Parliament of 5. H. 4. (which caused a Copie of these Commissions to be entred upon the Roll, as a Rule or President for

after times) and are not repealed, or altered by any Statutes now in force.

And yet, though this Danger, and the necessity of putting the Kingdom into a Posture of Defence, is thus agreed by both Houses; nevertheless, this Commission, and all others of like nature, are by their Declaration said to be illegall; And it is thereby denyed, That We have, at any time, Power to charge Our Subjects with any manner of Arms (though for the absolute necessary defence of the Kingdom) or that We can command them to be trained or exercised, much lesse to be led out of the County, though an Enemy be ready to enter, or though Rebels be actually up in Arms.

How far this opinion is consistent with Law, Reason, or regall Power, the safety of Our selves, and Our Subjects, (upon all this which We have said) We leave to all Our good people to consider.

And since Our two Houses (denying Us this Power) without Us, and against Our consent, have made Orders (which they call Ordinances) for compelling Our Subjects to be Armed, Trained, Exercised, Mustered, and conducted, and send for Our Subjects as Delinquents, and imprison them, for refusing to obey such Orders; It is apparent, That

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what this Declaration saith against Our Commission, without just ground, is true indeed of those Orders, that is, That they are contrary to the Law and Customs of the Realm, destructive to the Liberty, and Property of the Subjects, and contrary to the Petition of Right (as it is expounded in this Declaration,) as also against other Statutes.

FINIS.

Corrigenda.

FOlio 14. To the Marginall notes adde. See *Lamb.* fol. 135. A Law of King *Edward* the Confeſſor. *Debent enim univerſi liberi homines, &c ſecundum ſuadum ſuum, & ſecundum tenementa ſua arma habere & illa ſemper prompta conſervare ad tuitionem Regni & ſervitium Dominorum ſuorum juxta præceptū Domini Regis explendum & peragendum.* And *Libr. Rubr. Scaccarii fol.* 162. the Conquerours Law in theſe words, *Statuimus & firmiter præcipimus quod omnes Comites & Barones, & Milites, & Servientes, & univerſi liberi homines totius regni noſtri pred. habeant & teneant ſe ſemper in armis & equis ut decet & oportet, &c.* Vpon both which it appears, that every man, as well as the Kings Tenants, ought to have Arms according to his lands, for defence of the Kingdom, at the Kings command. And *Hoveden, Pag.* 614. *in Anno* 27 *H.* 2. *Deinde Henricus Rex Angl. fecit hanc aſſiſam de habendis armis in Angl. &c.* King *Henry* the ſecond made an aſſiſe of Arms for defence of the Kingdom according to the difference of mens abilities farre differing from that in 13 *E.* 1. And ſee *Matth. Paris, f.* 224. A Writ of King *Iohn* to ſummon *Omnes liberos homines et ſervientes vel quicunq; ſint & de quocunq; teneant qui arma habere debeant vel arma habere poſſint, quod ſicut, &c, ſint apud Doveram ad defendendum caput noſtrum, &c. ſubpæna Culvertagii.*

Fol 5. lin. 10. after *Commiſsioners* adde *without limitation*: and l. 11. after *able*, put a *Comma*. fol. 23. l. 26. after *no*, adde *further*: fol 25. l. 15. put out *fifth pretence of.* fol 35 l. 11. after *ſtatutes*, adde *and apply them to the two Objections, the one againſt impoſing Arms, the other againſt carrying out of the County.* l. 23. after *E.* 1. read (*beſides that it is but an affirmative ſtatute,*) f. 38. l. 14. for *eſtate* read *degree* f. 47. l 6. for *armed men*, read *men at arms*. fol. 52. Margine, read *ſtat.* 2. *H.* 4 *cap.* 20. f. 54. l. 13. after *Commiſsion* adde *neceſſary*, and l. 17. for *but* read *and*: f. 56. l. 2. after *ſtatute* adde 1. *E.* 3. f. 73. l. 11. for 1 *E.* 3. read 13. *E.* 1. f. 93. l. 17. adde *And ſo there was occaſion for the one Commiſsion when there was none for the other*: f. 94. l. 14. for *to command* read *of commanding*. fol. 22. lin. 23 for *Commiſsioners* read *Commons*.

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